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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,210	10/16/2001	Shian-Jiun Shih	A2922AUS	2753

5487 7590 07/29/2005

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EXAMINER

EPPS FORD, JANET L

ART UNIT	PAPER NUMBER
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1633

DATE MAILED: 07/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/763,210	Applicant(s) SHIH ET AL.	
	Examiner Janet L. Epps-Ford, Ph.D.	Art Unit 1633	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 July 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

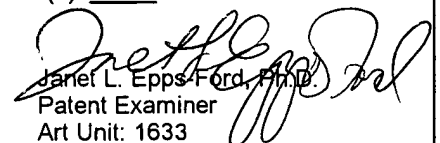
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-31 would remain rejected for the reasons of record.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attached note.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.


Janet L. Epps-Ford, Ph.D.
Patent Examiner
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Continuation of 3. NOTE: Applicant's amendment to the claims raises several issues that require new consideration and/or search: (a) Claims 6-13 now recite "said composition," however there is lack of antecedent basis for this limitation in these claims, therefore a new issue is raised under 35 USC 112, 2nd paragraph. (b) Newly amended claim 5 is now a substantial duplicate of claim 28, and newly amended claims 8-10 are a substantial duplicate of claims 29-31, therefore a new issue is raised under 37 CFR 1.75.

Continuation of 13. Other: The IDS filed 11-15-2002 was considered, and the signed PTO-1449 was attached to the Final Office Action mailed 8-11-2004.

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1. Claims 1-6, 22, 25-28 remain rejected under 35 USC 102(a) as being anticipated by WO 97/33975 (Crespo, for which US 6,248,588 B1 is its English version).

Applicants traverse the instant rejection on the grounds that Crespo et al. does not describe viral vectors, and therefore does not disclose methods or preparing adenoviral vector formulations. According to Applicants, Crespo does not mention "viral vector" anywhere in the document. Contrary to Applicant's assertions, Crespo describes recombinant viral vectors in column 8, lines 8-42 (US Patent), and pages 12-13 of WO document, therefore the invention of Crespo encompasses wherein biological material reads on viral vectors. Moreover, Applicant's definition of the term "vector" in the specification as filed, on page 7, lines 19-30, does not limit the definition of "vector" to solely a nucleic acid, Applicant's definition states that the term "vector" is any means for the transfer of a nucleic acid into a host cell. Therefore, based upon Applicant's definition, the term viral particle can also be interpreted as a viral vector.

2. Claims 1, 6-17, 22-24, 25, 26, and 29-31 remain rejected under 35 USC 103(a) as being unpatentable over Crespo in view Engler (US 2003/021 1598 A1).

Applicants traverse the instant rejection on the same grounds as set forth above, particularly that Crespo does not disclose methods for preparing adenoviral vector formulations, and further that Engler does not make up for this deficiency.

Contrary to Applicant's assertions, based upon Applicant's own definition, on page 7, lines 19-30, the methods for preparing viral particle formulations, and vector formulations of Crespo in view of Engler, render obvious the instantly claimed invention.

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3. Claims 1-31 are rejected under 35 USC 103(a) as being unpatentable over Crespo taken with Engler and further in view of Rolland (US 6,040,295) or Sene (WO 98/02522, wherein its English version is US 6,451,256)

Applicants traverse the instant rejection on the same grounds as set forth above, particularly that Crespo does not disclose methods for preparing adenoviral vector formulations, and further that Engler, further in view of Rolland or Sene do not make up for this deficiency.


Contrary to Applicant's assertions, as per Applicant's own definition on page 7, lines 19-30, the methods for preparing viral particle formulations, and vector formulations of Crespo, in view of Engler, and further in view of Rolland and Sene render obvious the instantly claimed invention.

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4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet L. Epps-Ford, Ph.D. whose telephone number is 571-272-0757. The examiner can normally be reached on Monday-Saturday, Flex Schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Nguyen can be reached on (571)272-0731. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Janet L. Epps-Ford, Ph.D.
Patent Examiner
Art Unit 1633

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